



General Assembly

January Session, 2005

Raised Bill No. 1071

LCO No. 3437

03437_____JUD

Referred to Committee on Judiciary

Introduced by:
(JUD)

***AN ACT CONCERNING MORTGAGES AND REAL ESTATE
FINANCING.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (c) of section 49-2 of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective*
3 *October 1, 2005*):

4 (c) Advancements may also be made by a mortgagee, or the
5 assignee of any mortgagee, under an open-end mortgage to the
6 original mortgagor, or to the assign or assigns of the original
7 mortgagor who assume the existing mortgage, or any of them, and any
8 such mortgage debt and future advances shall, from the time such
9 mortgage deed is recorded, without regard to whether the terms and
10 conditions upon which such advances will be made are contained in
11 the mortgage deed and, in the case of an open-end mortgage securing
12 a commercial revolving loan, a consumer revolving loan or a letter of
13 credit, without regard to whether the authorized amount of
14 indebtedness shall at that time or any time have been fully advanced,
15 be a part of the debt due such mortgagee and be secured by such
16 mortgage equally with the debts and obligations secured thereby at the

17 time of recording the mortgage deed and have the same priority over
18 the rights of others who may acquire any rights in, or liens upon, the
19 mortgaged real estate subsequent to the recording of such mortgage
20 deed, provided: (1) The heading of any such mortgage deed shall be
21 clearly entitled "Open-End Mortgage"; (2) the mortgage deed shall
22 contain specific provisions permitting such advancements and, if
23 applicable, shall specify that such advancements are made pursuant to
24 a commercial revolving loan agreement, a consumer revolving loan
25 agreement or a letter of credit; (3) the mortgage deed shall state the full
26 amount of the loan therein authorized; (4) the terms of repayment of
27 such advancements shall not extend the time of repayment beyond the
28 maturity of the original mortgage debt, provided this subdivision shall
29 not be applicable where such advancements are made or would be
30 made pursuant to a commercial revolving loan agreement, a consumer
31 revolving loan agreement or a letter of credit, and the mortgage deed
32 specifies that such advancements are repayable upon demand or by a
33 date which shall not be later than thirty years from the date of the
34 mortgage; (5) such advancements shall be secured or evidenced by a
35 note or notes signed by the original mortgagor or mortgagors or any
36 assign or assigns of the original mortgagor or mortgagors who assume
37 the existing mortgage, or any of them, but no note shall be required
38 with respect to any advancements made pursuant to a commercial
39 revolving loan agreement, a consumer revolving loan agreement or a
40 letter of credit as long as such advancements are recorded in the books
41 and records of the original mortgagee or its assignee; (6) the original
42 mortgage shall be executed and recorded after October 1, 1955; (7) the
43 original mortgagor or mortgagors, or any assign or assigns of the
44 original mortgagor or mortgagors who assume the existing mortgage,
45 or any of them, are hereby authorized to record a written notice
46 terminating the right to make such optional future advances secured
47 by such mortgage or limiting such advances to not more than the
48 amount actually advanced at the time of the recording of such notice,
49 provided a copy of such written notice shall also be sent by registered
50 or certified mail, postage prepaid and return receipt requested, to the

51 mortgagee, or a copy of such written notice shall be delivered to the
52 mortgagee by a proper officer or an indifferent person and a receipt for
53 the same received from the mortgagee, and such notice, unless a later
54 date is recorded or specified in the notice, shall be effective from the
55 time it is received by the mortgagee; (8) except that if any such
56 optional future advance or advances are made by the mortgagee, or
57 the assignee of any mortgagee, to the original mortgagor or
58 mortgagors, or any assign or assigns who assume the existing
59 mortgage, or any of them, after receipt of written notice of any
60 subsequent mortgage, lien, attachment, lis pendens, legal proceeding
61 or adjudication against such real property, then the amount of any
62 such advance, other than an advance made pursuant to a commercial
63 revolving loan agreement or a letter of credit, shall not be a priority as
64 against any such mortgage, lien, attachment, lis pendens or
65 adjudication of which such written notice was given; (9) any notice
66 given to the mortgagee under the terms of subdivision (8) of this
67 subsection shall be deemed valid and binding upon the original
68 mortgagee or any assignee of the original mortgagee, in the case of a
69 mortgagee other than a banking institution, on the next business day
70 following receipt by such mortgagee of such notice sent by registered
71 or certified mail, postage prepaid and return receipt requested, or by
72 hand delivery with a signed receipt, and in the case of a mortgagee
73 which is a banking institution, on the next business day following
74 receipt at the main office of such banking institution of such notice sent
75 by registered or certified mail, postage prepaid and return receipt
76 requested, or by hand delivery with a signed receipt. For the purposes
77 of this subsection: (A) "Banking institution" means a bank and trust
78 company, a national banking association having its main office in this
79 state, a savings bank, a federal savings bank having its main office in
80 this state, a savings and loan association, a federal savings and loan
81 association having its main office in this state, a credit union having
82 assets of two million dollars or more, or a federal credit union having
83 its main office in this state and having assets of two million dollars or
84 more; (B) "commercial revolving loan" means a loan to a foreign or

85 domestic corporation, partnership, sole proprietorship, association or
 86 entity, or any combination thereof, [organized for profit and engaged
 87 primarily in commercial, manufacturing or industrial pursuits] the
 88 proceeds of which are not intended primarily for personal, family or
 89 household purposes, which loan entails advances of all or part of the
 90 loan proceeds and repayments of all or part of the outstanding balance
 91 of the loan from time to time; and (C) "consumer revolving loan"
 92 means a loan to one or more individuals, the proceeds of which are
 93 intended primarily for personal, family or household purposes, which
 94 is secured by a mortgage on residential real property, and is made
 95 pursuant to an agreement between the mortgagor and mortgagee
 96 which (i) provides for advancements of all or part of the loan proceeds
 97 during a period of time which shall not exceed ten years from the date
 98 of such agreement and for repayments of the loan from time to time,
 99 (ii) provides for payments to be applied at least in part to the unpaid
 100 principal balance not later than ten years from the date of the loan, (iii)
 101 does not authorize access to the loan proceeds by a credit card or any
 102 similar instrument or device, whether known as a credit card, credit
 103 plate, or by any other name, issued with or without a fee by an issuer
 104 for the use of the cardholder in obtaining money, goods, services, or
 105 anything else of value on credit, and (iv) does not provide that such a
 106 revolving loan to more than one mortgagor will be immediately due
 107 and payable upon the death of fewer than all the mortgagors who
 108 signed the revolving loan agreement. Nothing in this subsection shall
 109 affect the validity or enforceability of any loan agreement which
 110 provides for future advancements by a lender to a borrower as
 111 between such parties or their heirs, successors or assigns, or shall affect
 112 the validity or enforceability of any mortgage securing any such loan
 113 that would be valid and enforceable without the provisions of this
 114 subsection.

115 Sec. 2. Section 49-9 of the general statutes is amended by adding
 116 subsection (d) as follows (*Effective October 1, 2005*):

117 (NEW) (d) A release of mortgage executed in accordance with this

118 section shall operate to release the interest of the releasor in the
119 mortgage which is the subject of the release, even if such interest is, in
120 fact, acquired by the releasor after executing such release or does not
121 appear of record until after the execution of such release.

122 Sec. 3. Section 49-10 of the general statutes is amended by adding
123 subsection (h) as follows (*Effective October 1, 2005*):

124 (NEW) (h) An assignment executed in accordance with this section
125 shall operate to assign the interest of the assignor in the mortgage
126 which is the subject of the assignment, even if such interest is, in fact,
127 acquired by the assignor after executing such assignment or does not
128 appear of record until after the execution of such assignment.

129 Sec. 4. Section 49-13a of the general statutes is repealed and the
130 following is substituted in lieu thereof (*Effective October 1, 2005*):

131 When record title to real property remains encumbered by any
132 undischarged mortgage, and the mortgagor or those owning his
133 interest therein have been in undisturbed possession of the property
134 for at least [forty] thirty years after the expiration of the time limited in
135 the mortgage for the full performance of the conditions thereof, or for
136 at least thirty years from the recording of the mortgage when the
137 mortgage does not disclose the time when the note or indebtedness is
138 payable or disclose the time for full performance of the conditions of
139 the mortgage, the mortgage shall be invalid as a further lien against
140 the real estate. [, provided an affidavit, subscribed and sworn to by the
141 party in possession, stating the fact of such possession, is recorded on
142 the land records of the town wherein the property is situated.]

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2005</i>	49-2(c)
Sec. 2	<i>October 1, 2005</i>	49-9
Sec. 3	<i>October 1, 2005</i>	49-10
Sec. 4	<i>October 1, 2005</i>	49-13a

Statement of Purpose:

To redefine "commercial revolving loan" for purposes of open-end mortgages to include loans made to nonprofit entities, to facilitate the clearing of real estate titles by providing that a release or assignment of mortgage operates to release or assign after-acquired title to the mortgage, to reduce the time period for invalidating undischarged mortgages, where the mortgagor or those who owned the land had been in undisturbed possession, from forty years to thirty years after the mortgage should have been paid off, to allow undischarged mortgages that have no stated maturity date to be released automatically thirty years after the recording of the mortgage and to eliminate the requirement that an affidavit be recorded on the land records in the case of an undischarged mortgage.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]